

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 FOR THE COUNTY OF LOS ANGELES

3 DEPARTMENT NO. 56

HON. BRUCE R. GEERNAERT, JUDGE

4 RECEIVED

5 CHURCH OF SCIENTOLOGY, ETC.,)

MAY 15 1992

6 PLAINTIFFS,)

HUB LAW OFFICES

7 VS.)

NO. BC 052395

8 GERALD ARMSTRONG, ET AL.,)

9 DEFENDANTS.)

10
11 REPORTER'S TRANSCRIPT OF PROCEEDINGS

12 TUESDAY, APRIL 28, 1992

13
14 FOR THE PLAINTIFF:

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21
22
23 (APPEARANCES CONTINUED ON
FOLLOWING PAGE.)

24
25
26 COPY

27
28 MAUREEN GERWIG, CSR NO. 1877
OFFICIAL REPORTER

1 APPEARANCES: (CONTINUED)

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12 FOR AMICUS CURIAE:

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1 LOS ANGELES, CALIFORNIA; TUESDAY, APRIL 28, 1992; A.M. SESSION
2 DEPARTMENT NO. 56 HON. BRUCE R. GEERNAERT, JUDGE
3 (MAUREEN GERWIG, OFFICIAL REPORTER)

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5
6 THE COURT: THE MATTER OF CHURCH OF SCIENTOLOGY
7 VERSUS GERALD ARMSTRONG, BC 052395.

8 YOUR APPEARANCES, PLEASE.

9 MR. WILSON: ANDREW WILSON APPEARING ON BEHALF OF
10 PLAINTIFF, CHURCH OF SCIENTOLOGY INTERNATIONAL.

11 MS. BARTILSON: LAURIE BARTILSON ALSO HERE FOR PLAINTIFF.

12 MR. GREENE: FORD GREENE ON BEHALF OF DEFENDANT
13 GERALD ARMSTRONG.

14 MR. MORANTZ: PAUL MORANTZ ALSO FOR DEFENDANT GERALD
15 ARMSTRONG.

16 MR. BERRY: GRAHAM BERRY ON BEHALF OF JOSEPH E. YANNY
17 WHO IS NOW AN AMICUS CURIAE IN THE CASE.

18 JUDGE DUFFICY GRANTED LEAVE TO FILE AN AMICUS
19 CURIAE BRIEF, AND THERE IS ALSO A MOTION.

20 MR. WILSON: JUDGE DUFFICY GRANTED A MOTION FOR
21 MR. BERRY TO APPEAR AS AMICUS CURIAE WITH RESPECT TO THE --
22 THAT DOES NOT MEAN MR. BERRY IS ALLOWED TO APPEAR WITH
23 RESPECT TO THE CHALLENGE WE JUST FILED.

24 THE COURT: WE WILL GET TO THAT. I DON'T KNOW
25 THAT THAT'S GOING TO BE MEANINGFUL.

26 IT'S NECESSARY TO STATE THE BACKGROUND HERE TO
27 DETERMINE THE PROPRIETY OF THE PEREMPTORY CHALLENGE THAT
28 WAS FILED THIS MORNING IN DEPARTMENT 56.

1 THIS CASE IS ONE THAT WAS ORIGINALLY FILED IN
2 MARIN COUNTY AND THEN WAS TRANSFERRED TO LOS ANGELES
3 COUNTY ON APRIL 2ND, 1992.

4 IT ARRIVED HERE ANYWAY AND BY REASON OF ITS
5 NUMBER WAS ASSIGNED TO JUDGE DAVID HOROWITZ.

6 HOWEVER, BY REASON OF THE REMEDIES SOUGHT IT
7 WAS PURSUANT TO OUR RULES ASSIGNED TO THE MASTER CALENDAR
8 DEPARTMENT THAT HEARS PRELIMINARY INJUNCTIONS, THAT'S
9 85, JUDGE O'BRIEN.

10 THE MASTER CALENDAR, JUDGE MALLANO THIS MORNING
11 ASSIGNED THIS CASE TO DEPARTMENT 56, AND THIS ASSIGNMENT
12 WAS MEMORIALIZED BY THE MINUTE ORDER OF DEPARTMENT 85 WHICH
13 READS, PURSUANT TO DIRECTION FROM DEPARTMENT 1 THE CASE IS
14 REASSIGNED TO DEPARTMENT 56, JUDGE GEERNAERT.

15 NOW, AS I UNDERSTAND, THERE WAS NO 176 -- 170.6
16 FILED EITHER IN DEPARTMENT 1 OR IN DEPARTMENT 85 THAT WAS
17 ACTING FOR DEPARTMENT 1.

18 MR. WILSON: THAT'S CORRECT.

19 THE COURT: AND THAT WHEN THE FILE AND THE PARTIES
20 ARRIVED HERE, COUNSEL ARRIVED HERE IN DEPARTMENT 56 THE
21 PEREMPTORY CHALLENGE WAS FILED IN DEPARTMENT 56.

22 MR. WILSON: THAT'S CORRECT.

23 THE COURT: NOW, THIS RAISES -- AND I ALSO UNDERSTAND
24 I HAVE BEEN ASKED TO READ THIS BECAUSE -- BECOME FAMILIAR
25 WITH THE HISTORY BECAUSE THERE IS TO BE OPPOSITION TO THE
26 EFFECTIVENESS OF THE PEREMPTORY CHALLENGE.

27 MR. GREENE: THAT'S CORRECT, YOUR HONOR.

28 THE COURT: BEFORE WE GET TO THE SPECIFICS I'D JUST

1 LIKE TO COVER A COUPLE OF THINGS THAT ARE REFERRED TO IN
2 THE PAPERS THAT YOU HAVE BEEN CALLING TO MY ATTENTION WHILE
3 I HAVE BEEN IN CHAMBERS AND YOU HAVE BEEN IN THE COURTROOM.

4 FIRST OF ALL, IT HAS COME TO MY ATTENTION THAT
5 ON APRIL 22, 1992 THERE WAS FILED A NOTICE OF IMPROPER
6 FILING OR IN THE ALTERNATIVE OF RELATED CASE PURSUANT TO
7 LOS ANGELES SUPERIOR COURT LOCAL RULE NO. 1103.

8 THAT DOES NOT HAVE A HEARING DATE SET ON IT.
9 THAT WOULD BE SOMETHING THAT WOULD BE HEARD IN DEPARTMENT 1,
10 AND I JUST COMMENT THAT THERE IS ALTERNATE REMEDIES SOUGHT,
11 AND ONE OF THEM WOULD BE TO RELATE IT TO THE CASE THAT I
12 EARLIER HAD WHICH WAS CASE 42015 -- WE'LL JUST CALL IT THE
13 53 CASE. AND THE OTHER REMEDIES SOUGHT IMPLICITLY, I GUESS
14 IS TO DISMISS IT.

15 WHEN YOU SAY IMPROPERLY FILED AND YOU TALK ABOUT
16 THE FACT IT'S A DUPLICATION OF THE CONTROVERSY THAT WAS
17 TRIED BEFORE ME I TAKE IT THAT'S A RES JUDICATA TYPE OF
18 ARGUMENT FOR DISMISSAL.

19 THAT, OBVIOUSLY IS NOT BEFORE ME AND, HOWEVER,
20 THE ARGUMENT THEREIN, AND ALSO YOU'VE ASKED FOR -- SOMEBODY'S
21 ASKED THAT I READ THE TRANSCRIPT OF THE HEARING BEFORE ME
22 ON DECEMBER 23RD, 1991 IN THE 53 CASE AND THE PARTICULAR
23 PAGE, PAGE 63.

24 I HAVEN'T READ THE WHOLE TRANSCRIPT, BUT I WILL
25 JUST READ PART OF IT.

26 "THE COURT: SO BASICALLY I AM
27 CONCLUDING I THINK THAT 664.6 DOES NOT GRANT
28 THIS COURT JURISDICTION OVER MR. ARMSTRONG

1 PERSONALLY OR JURISDICTION TO ENFORCE THE
2 AGREEMENT. NOR DOES 127(A)(4) IN THAT
3 THERE NEVER WAS AN ORDER BY JUDGE BRECKENRIDGE
4 REQUIRING THE PARTIES TO PERFORM THE AGREEMENT."

5 THEN DOWN BELOW:

6 "MR. HERTZBERG: I TAKE IT
7 YOUR HONOR IS DENYING OUR MOTION THEN ON THE
8 BASIS OF LACK OF JURISDICTION.

9 "THE COURT: I THINK THAT IS
10 WHAT IT COMES DOWN TO. SO THE MINUTE ORDER
11 WILL SHOW THAT THE MOTION IS DENIED."

12 NOW, LATER IN THE TRANSCRIPT THE SPECIFIC ORDER
13 WAS DEVELOPED AND I SUGGEST THAT YOU EACH STUDY THIS ORDER,
14 BECAUSE I THINK YOU ARE REALLY NOT FOCUSING ON WHAT THE
15 DECISION WAS.

16 THE DECISION REALLY DIDN'T HAVE ANYTHING TO DO
17 WITH LACK OF PERSONAL JURISDICTION OVER MR. ARMSTRONG,
18 ALTHOUGH IN THE TRANSCRIPT WE TALKED ABOUT IT.

19 WE TALKED ABOUT IT IN THE ALTERNATIVE, BUT THE
20 DECISION WAS AS FOLLOWS:

21 MOTION OF PLAINTIFF CROSS-DEFENDANT TO ENFORCE
22 SETTLEMENT AGREEMENT IS DENIED ON THE BASIS THAT JUDGE
23 BRECKENRIDGE DID NOT SIGN AN ORDER OR MAKE AN ORDER REQUIRING
24 THE PARTIES TO PERFORM THE DOCUMENT ENTITLED "MUTUAL RELEASE
25 OF ALL CLAIMS IN THE SETTLEMENT AGREEMENT." NOR DID JUDGE
26 BRECKENRIDGE SIGN ANY ORDER RESERVING JURISDICTION IN THE
27 COURT IN THIS CASE TO ENFORCE SAID AGREEMENT.

28 THE COURT IS AWARE THAT THE PARTIES STIPULATED IN

1 THEIR JOINT STIPULATION OF DISMISSAL, PAGE 2, LINES 5 AND 6,
2 "THIS COURT SHALL RETAIN JURISDICTION AND MADE REOPEN THIS
3 CASE AT ANY TIME FOR THE PURPOSE OF ENFORCING SAID AGREEMENT.

4 AND FURTHER IT APPEARS THAT JUDGE BRECKENRIDGE
5 MAY HAVE BEEN AWARE OF THAT AGREEMENT BETWEEN THE PARTIES,
6 BUT IT NEVERTHELESS APPEARS THAT JUDGE BRECKENRIDGE WAS NOT
7 ASKED TO AND DID NOT ORDER THE PARTIES TO PERFORM THE
8 SUBJECT AGREEMENT. NOR DID HE ORDER CONTINUING JURISDICTION.
9 NOW, THAT'S THE BASIS FOR THE DECISION.

10 IT HAD NOTHING TO DO WITH PERSONAL JURISDICTION
11 OVER MR. ARMSTRONG AND GOING UP TO MARIN COUNTY TO GET
12 PERSONAL JURISDICTION OVER HIM, AND IF THAT WAS DONE BECAUSE
13 OF MY ORDER IT WAS A MISREADING OF MY ORDER AND THE REASONS
14 FOR IT.

15 WE TALK ABOUT PERSONAL JURISDICTION, BUT THAT
16 WASN'T THE BASIS FOR THE ORDER.

17 THE BASIS FOR THE ORDER WAS JUDGE BRECKENRIDGE
18 NEVER MADE AN ORDER AND, THEREFORE, IT WAS INAPPROPRIATE
19 UNDER THE LAW FOR THIS COURT TO ENFORCE THE AGREEMENT, AND
20 THAT WAS THE BASIS OF MY DECISION AND THAT'S, OF COURSE --
21 THAT WAS REVIEWABLE BY DIRECT APPEAL.

22 AND IF YOU DISAGREE WITH THAT, THAT'S THE
23 APPROPRIATE WAY TO PROCEED NOT TO GO TO ANOTHER SUPERIOR
24 COURT WITH THE SAME CONTROVERSY.

25 SO I CAUTION THE CHURCH HERE. I MAY NOT BE THE
26 JUDGE, BUT I CAUTION THE CHURCH THAT IF YOU ARE MISREADING
27 MY ORDER BECAUSE OF A COMMENT I MADE IN THE TRANSCRIPT THAT
28 YOU SHOULD LOOK AT THE ORDER I ACTUALLY MADE.

1 IT HAS NOTHING TO DO WITH PERSONAL JURISDICTION
2 OVER GERALD ARMSTRONG. IT HAD TO DO WITH WHETHER JUDGE
3 BRECKENRIDGE HAD ORDERED THE ENFORCEMENT OF THE AGREEMENT,
4 AND THAT'S THE SOLE BASIS FOR MY FAILURE TO ORDER AS WAS
5 REQUESTED THAT GERALD ARMSTRONG NOT BREACH THE AGREEMENT.

6 I GIVE YOU THAT AS AN ASIDE. I CAN'T HELP BUT
7 NOTICING THE MISREADING AND MISCHARACTERIZATION OF MY ORDER
8 OF DECEMBER 23RD, 1991.

9 NOW, I DO THINK THAT THE PEREMPTORY CHALLENGE IS
10 PROBABLY WELL TAKEN.

11 THERE IS A CLOSE ISSUE UNDER C.C.P. 170.6 IN THAT
12 TECHNICALLY THIS WAS DIRECTED TO THIS COURT FROM THE MASTER
13 CALENDER THROUGH THE ORDER OF JUDGE MALLANO PORTRAYED IN THE
14 MINUTE ORDER OF JUDGE O'BRIEN'S DEPARTMENT, AND TECHNICALLY
15 THAT REQUIRES AT LEAST ARGUABLY THAT THE 170.6 CHALLENGE BE
16 FILED IN THE MASTER CALENDAR.

17 IT WASN'T DONE. I DON'T KNOW THE SIGNIFICANCE
18 OF IT, BUT THAT'S THE ONLY DEFICIENCY THAT I CAN SEE.

19 I DON'T SEE HOW THE FACT THAT THERE WAS ANOTHER
20 CASE THAT MAY BE SIMILAR OR THAT THERE IS A PENDING MATTER
21 IN DEPARTMENT 1 WHICH MAY DISPOSE OF THIS CASE AND WOULD
22 DIMINISH THE CHURCH'S RIGHT TO FILE A 170.6 HERE.

23 HOWEVER, YOU HAVE ASKED FOR TIME, AND I WILL GIVE
24 YOU TIME NOW TO ARGUE IT AND PERHAPS TIME TO BRIEF IT.

25 I GUESS I HAD BETTER ASK THIS, BECAUSE THIS CAME
26 FROM ANOTHER COUNTY.

27 HAS THE CHURCH FILED ANY PRIOR PEREMPTORY
28 CHALLENGE?

1 MR. WILSON: NO. LOCAL RULE 1104.1 PROVIDES THAT
2 170.6 CHALLENGE ASSERTING A CHALLENGE TO AN I.C. JUDGE
3 MUST BE MADE WITHIN 10 DAYS AFTER NOTICE OF ASSIGNMENT.

4 IF YOU LOOK AT 1104.3 IT SAYS EFFECTIVE, WHICH IS
5 ENTITLED EFFECTIVE.

6 IT SAYS THAT UPON THE MAKING OF SUCH A CHALLENGE
7 THE ASSIGNED I.C. JUDGE SHALL IMMEDIATELY TRANSFER THE CASE
8 TO DEPARTMENT 1 FOR REASSIGNMENT.

9 I READ THOSE TOGETHER TO MEAN THE CHALLENGE --
10 THE 170.6 CHALLENGE SHOULD BE FILED IN THE COURT OF THE I.C.
11 JUDGE TO WHICH THE CASE IS ASSIGNED, WHICH IS WHY IT WAS
12 FILED HERE.

13 THE COURT: I THINK -- YOU HAVE TO READ THAT RULE
14 IN VIEW OF THE ASSIGNMENT PROCEDURES THAT ARE SPELLED OUT
15 IN THE RULES, AND THIS CASE WAS ORIGINALLY ASSIGNED TO THE
16 I.C. DEPARTMENT ACCORDING TO ITS NUMBER, JUDGE HOROWITZ'S
17 DEPARTMENT. AND YOU WOULD HAVE HAD 10 DAYS TO CHALLENGE HIM
18 THERE WITH REGARD TO THAT ASSIGNMENT.

19 THAT'S WHAT THAT RULE REFERS TO, BUT THIS CASE
20 REALLY WAS ASSIGNED FROM THE MASTER CALENDAR JUDGE O'BRIEN
21 AND SITS IN THE MASTER CALENDAR AND HE HEARS THIS KIND OF
22 REMEDY IN ALL THE CASES -- ALMOST ALL THE CASES IN THE
23 BUILDING EXCEPT FOR THOSE THAT ARE FILED UNDER MY NUMBERS AT
24 THIS POINT.

25 BASICALLY THIS WAS A MASTER CALENDAR ASSIGNMENT.
26 JUDGE MALLANO MADE THE ASSIGNMENT. HE CALLED ME AND TOLD ME
27 HE WAS DOING IT.

28 HE CALLED O'BRIEN'S DEPARTMENT AND TOLD HIM TO DO

1 IT. THE MINUTE ORDER REFLECTS IT WAS DEPARTMENT 1'S ORDER.

2 SO THIS DOES NOT FALL WITHIN THE RULE YOU HAVE
3 JUST READ.

4 MR. MORANTZ: WE WOULD LIKE SOME TIME TO BRIEF IT.

5 WE THINK THIS IS A SITUATION THAT IS VERY UNIQUE.
6 IN FACT, IT MAY NOT ACTUALLY APPEAR BEFORE SINCE THE FAST-
7 TRACK RULES HAVE COME INTO PLACE.

8 WHEN WE LOOK AT THE PURPOSE OF THE PEREMPTORY,
9 WHICH IS TO GET RID OF ONE JUDGE BEFORE THE JUDGE HAS MADE
10 SOME RULING IN THE CASE OR SOMEHOW INDICATED SOME FACTUAL
11 FINDING AS BEING A MATTER OF RIGHT TO EACH SIDE, AND YOU LOOK
12 AT THE I.C. RULES WHICH ARE TO HAVE RELATED CASES TRIED
13 BEFORE THE SAME JUDGE, JUDICIAL ECONOMY NOT TO HAVE MATTERS
14 BIFURCATED, NOT TO HAVE FORUM SHOPPING, AND WE SEE SOMETHING
15 HERE KIND OF IN THE MIDDLE.

16 WE WISH TO LOOK INTO WHAT HAPPENS WHEN YOU HAVE
17 ARMSTRONG WON THIS MATTER BEFORE THIS COURT. THIS COURT
18 MADE CERTAIN FACTUAL FINDINGS IN RELATIONSHIP TO ITS
19 DECISION.

20 IT MADE A FACTUAL FINDING WHETHER OR NOT JUDGE
21 BRECKENRIDGE HAD THE SETTLEMENT AGREEMENT BEFORE IT, WHETHER
22 OR NOT JUDGE BRECKENRIDGE HAD ACTUALLY READ IT, WHETHER HE
23 WOULD HAVE SIGNED IT.

24 THE COURT MADE COMMENTS ABOUT PUBLIC POLICY.
25 AND AT THAT PARTICULAR POINT IN TIME THEY WERE GOING TO
26 FILE THE SAME LAWSUIT SEEKING THE SAME LEAVE SOMEWHERE ELSE
27 AFTER THIS COURT ALREADY MADE SOME FACTUAL DETERMINATIONS.

28 DEPARTMENT 1, BASED UPON OUR FILING -- IMPROPER

1 FILING AND RELATED ACTS WE COME IN AND SAY THIS MATTER HAS
2 ALREADY BEEN BEFORE THIS COURT. THIS COURT ALREADY HAS MADE --

3 THE COURT: YOU FILED THAT DOCUMENT BUT YOU DIDN'T.
4 THE FILING STAMP SHOWS YOU HAVE FILED THAT IN -- I MEAN
5 THIS IS THE CLERK WHO IS THE COURT CLERK IN DEPARTMENT 85,
6 SO YOU MUST HAVE FILED IT IN '85.

7 MR. MORANTZ: NO, YOUR HONOR. I THINK IT GOT FILED
8 AS AN EXHIBIT. IT WAS FILED IN DEPARTMENT 1 INITIALLY.

9 THE COURT: MAYBE.

10 MR. MORANTZ: I FILED IT AS AN EXHIBIT IN A REQUEST
11 FOR CONTINUANCE.

12 THE COURT: THE POINT IS YOU DIDN'T ASK FOR A HEARING.

13 MR. MORANTZ: YOU DON'T UNDER THOSE RULES.

14 THE COURT: LOOK, YOU DON'T IF YOU ARE JUST FILING A
15 RELATED CASE NOTICE, BUT THIS NOTICE REALLY IS A MOTION THE
16 WAY I READ IT, IS A MOTION TO DISMISS THE CASE ON THE BASIS
17 THAT IT'S AN IMPROPER FILING.

18 THAT'S THE TITLE OF YOUR MOTION, AND THE BASIS
19 IMPLICITLY IS THAT THEY ARE COLLATERALLY ESTOPPED, HAVING
20 PARTICIPATED IN THE SAME CONTROVERSY IN THE 53 CASE -- THE
21 NO. 53 OR IN DEPARTMENT 56.

22 NOW, THAT PROBABLY SHOULD BE HEARD BEFORE A
23 WHOLE BUNCH OF ACTIVITY HAPPENS, THAT IS, WHERE YOU ARE
24 GOING TO BE ARGUING THAT VERY THING IN OPPOSITION TO A MOTION
25 FOR PRELIMINARY INJUNCTION AND OPPOSITION TO A PEREMPTORY
26 CHALLENGE.

27 IN OTHER WORDS, THAT SORT OF CUTS ACROSS THE
28 EXISTENCE OF THIS MARIN COUNTY CASE. AND, THEREFORE, IT

1 SEEMS TO ME THAT WHATEVER WE DO HERE YOU OUGHT TO REALLY SEEK
2 AN EARLY HEARING ON THAT MOTION AND MAKE SURE THAT YOU, IF
3 YOU ARE SEEKING A DISMISSAL THAT YOU MAKE THAT CLEAR TO
4 DEPARTMENT 1, BECAUSE LOOKING AT THE TITLE THERE IS NO
5 HEARING DATE SET.

6 THEY MAY NOT EVEN HAVE READ THIS MOTION. THE
7 LAW CLERK MAY BE GOING OVER IT JUST TO FIND OUT IF THEY ARE
8 RELATED AND EVENTUALLY MAY BE DEEMED RELATED.

9 IF IT WERE DEEMED RELATED IT WOULD PROBABLY COME
10 HERE.

11 MR. MORANTZ: THAT'S WHAT HAPPENED. I BELIEVE THAT IS
12 WHAT HAPPENED.

13 THEY FILED THEIR OPPOSITION TO THAT NOTICE AND
14 DEPARTMENT 1 HAS RULED UPON THAT.

15 THE COURT: THAT IT WAS RELATED? WHEN WAS THAT?

16 MR. MORANTZ: I ASSUME --

17 THE COURT: THIS HAS NOT BEEN SENT HERE AS A RELATED
18 CASE. THE MINUTE ORDER DOESN'T SHOW IT.

19 THE MINUTE ORDER DOESN'T SHOW DEPARTMENT 1 WAS
20 AWARE OF THE RELATED CASE NOTICE AT THE TIME THEY MADE THE
21 ORDER TODAY.

22 MR. MORANTZ: YESTERDAY AFTERNOON I BROUGHT A MOTION
23 TO DEPARTMENT 85 TO CONTINUE THE PRELIMINARY HEARING BECAUSE
24 THE NOTICE OF RELATED CASE WAS PENDING IN DEPARTMENT 1,
25 AND DEPARTMENT 85 SHOULD NOT RULE ON THE PRELIMINARY
26 INJUNCTION UNTIL DEPARTMENT 1 SO RULES.

27 AND JUDGE O'BRIEN CONTINUED THAT TO THIS MORNING
28 AND SAID POSSIBLY THE ISSUE WITH YOUR HONOR WHETHER OR NOT

1 IT WAS TO BE TRANSFERRED HERE WOULD BE RULED UPON.

2 WHEN WE SHOWED UP THIS MORNING IN DEPARTMENT 85
3 WE NEVER SPOKE TO JUDGE O'BRIEN, WHOSE CLERK CALLED US IN
4 THE HALLWAY AND SAID DEPARTMENT 1 HAS SENT IT HERE.

5 I CONSTRUE THAT AS DEPARTMENT 1, AFTER WE BROUGHT
6 IT JUDGE O'BRIEN'S ATTENTION POSSIBLY JUDGE O'BRIEN -- IT'S
7 MY ASSUMPTION LOOKING FROM THAT PROCEDURAL HISTORY IS THAT
8 WHAT HAPPENED DEPARTMENT 1 HAS RULED THIS IS A RELATED CASE
9 AND SENT IT HERE.

10 THE COURT: I THINK YOU ARE SPECULATING. NOTHING IN
11 THE MINUTE ORDER SHOWS THAT.

12 JUDGE O'BRIEN DIDN'T SAY ANYTHING LIKE THAT
13 TO ME.

14 I DIDN'T KNOW THERE WAS THIS NOTICE UNTIL YOU
15 POINTED IT OUT TO ME.

16 MR. MORANTZ: IF WE HAVE AN OPPORTUNITY TO BRIEF THIS
17 -- IF IT'S A RELATED CASE AND IT HAS THE SAME PARTIES IN
18 BOTH CASES, HAS THE FACT THE JUDGE -- YOUR HONOR MADE A
19 RULING REFLECTING THESE ISSUES PRECLUDE A 170.

20 THE COURT: THAT'S AN INTERESTING QUESTION. I DON'T
21 KNOW THE ANSWER TO THAT.

22 MR. WILSON: I DON'T THINK IT NEEDS ANY BRIEFING.
23 THERE IS NOTHING IN THE RULES THAT SAYS WHEN YOU HAVE A
24 RELATED CASE YOU DON'T GET A PEREMPTORY CHALLENGE. IF YOU
25 LOOK AT THE RULES THERE IS CLEAR --

26 THE COURT: THERE REALLY COULDN'T BE. OFTENTIMES
27 RELATED CASES INVOLVE OTHER PARTIES THAT WEREN'T IN THE FIRST
28 CASE.

1 WHEN YOU HAVE THE SAME PARTIES, THE SAME
2 CONTROVERSY THERE IS AN ARGUMENT AT LEAST UNDER 170.6.
3 I DON'T KNOW IT'S EVER BEEN DECIDED.

4 WHAT I AM SUGGESTING IS THAT THIS IS A CLOSE
5 ENOUGH QUESTION THAT I AM WILLING TO HAVE YOU BRIEF IT.

6 I ALSO AM GOING TO SUGGEST TO DEPARTMENT 1 THAT
7 THEY DECIDE YOUR REQUEST, BECAUSE IF THIS IS -- I THINK YOU
8 ARE ASKING FOR DISMISSAL; IS THAT RIGHT?

9 MR. MORANTZ: IF WE HAVEN'T ASKED FOR IT EXPRESSLY I
10 THINK WE SHOULD.

11 THE COURT: I DIDN'T SEE THE WORD. WHEN YOU ARE
12 SAYING IT'S IMPROPERLY FILED WHAT WOULD DEPARTMENT 1 DO IF
13 THEY FOUND IT WAS IMPROPERLY FILED?

14 MR. GREENE: THEY WOULD DISMISS IT ACCORDING TO THE
15 LOCAL RULE.

16 THE COURT: THAT NEEDS TO BE GIVEN SOME ATTENTION,
17 AND BEFORE A WHOLE BUNCH OF ACTIVITY HAPPENS IN THIS WE WILL
18 CALL IT THE MARIN COUNTY CASE OR THE 95 CASE.

19 MR. WILSON: YOUR HONOR, I THINK THE MATTER IS EASILY
20 DISPOSED OF EVEN IF YOU LOOK AT 170.6 WHICH SAYS IN ITS
21 LAST PARAGRAPH THAT THE FACT THAT A JUDGE, COURT COMMISSIONER
22 OR REFEREE HAS PRESIDED AT OR ACTED IN CONNECTION WITH THE
23 PRETRIAL CONFERENCE OR OTHER HEARING, PROCEEDING, ET CETERA
24 AND NOT INVOLVING A DETERMINATION OF CONTESTED FACT ISSUES
25 RELATING TO THE MERITS SHALL NOT PRECLUDE THE LATER MAKING
26 OF THE MOTION.

27 NOW, THE ONLY QUESTION YOU HAVE TO ADDRESS IS
28 WHAT YOU DID IN DECEMBER. DID THAT INVOLVE A DETERMINATION

1 OF A CONTESTED FACT ISSUE ON THE MERITS.

2 IT DID NOT. THE MERITS OF THAT MOTION WERE
3 WHETHER MR. ARMSTRONG SHOULD BE ENJOINED FROM CERTAIN
4 ACTIVITIES, AND YOU DECIDED, AS YOU HAVE CORRECTLY, WHAT
5 YOU DECIDED WAS YOU DIDN'T HAVE JURISDICTION BECAUSE
6 JUDGE BRECKENRIDGE HAD NOT SIGNED THE SETTLEMENT AGREEMENT.

7 THERE WAS NO CONTESTED FACT ISSUE THAT YOU
8 DECIDED AS TO THE MERITS.

9 AND, THEREFORE, EVEN IF MR. MORANTZ IS RIGHT
10 AND SOMEHOW BECAUSE IT'S A RELATED CASE YOU LOOK AT IT AS
11 IF IT WAS THE SAME CASE, EVEN IF IT WAS THE SAME CASE THIS
12 CHALLENGE IS TIMELY AND PROPER, AND THERE IS NO NEED TO BRIEF
13 IT.

14 THE COURT: I THINK THAT'S MUCH CLOSER, BECAUSE I KNOW
15 THERE ARE CASES HOLDING THAT HEARING A MOTION DOES NOT
16 CONSTITUTE A DETERMINATION ON THE MERITS.

17 BUT I THINK THERE ARE CASES HOLDING THAT HEARING
18 AND DETERMINING A REQUEST FOR INJUNCTIVE RELIEF OR WHICH WAS
19 -- WHAT WAS BEING SOUGHT IN MY DEPARTMENT IN DECEMBER IS
20 A DETERMINATION WHICH BARS A LATER PEREMPTORY CHALLENGE.

21 MR. WILSON: IF YOU DETERMINE CONTESTED FACT ISSUES
22 THAT RELATE TO THE MERITS --

23 THE COURT: YOU KNOW, THERE IS CERTAINLY AN ARGUMENT
24 WHAT I DETERMINED WAS A CONTESTED FACT ISSUE.

25 I MEAN, IN RETROSPECT OFTENTIMES CONTESTED FACTS
26 AREN'T REALLY CONTESTED BECAUSE ONE PARTY'S WRONG AND THE
27 OTHER PARTY'S RIGHT, BUT YOU WERE URGING THAT JUDGE
28 BRECKENRIDGE HAD ORDERED THE ENFORCEMENT OF THAT AGREEMENT

1 AND YOU WERE ORDERING THAT JUDGE BRECKENRIDGE HAD ORDERED
2 CONTINUING JURISDICTION.

3 AND IT WAS ONLY WHEN WE CAREFULLY READ THE
4 DOCUMENTS THAT WE FOUND THAT THE PARTIES HAD STIPULATED TO
5 SUCH AN ORDER, BUT JUDGE BRECKENRIDGE HAD NEVER FOLLOWED
6 THROUGH AND DONE IT. AND THAT WAS IN THE NATURE OF A
7 CONTESTED FACT.

8 I AM NOT DECIDING THIS, BUT IT CERTAINLY IS NOT --

9 MR. HERTZBERG: I AM MR. HERTZBERG. I WAS BEFORE YOU
10 IN DECEMBER.

11 MR. GREENE: I OBJECT TO MR. HERTZBERG THE SAME WAY
12 OPPOSING COUNSEL OBJECTED TO MR. BERRY. HE HAS NOT BEEN
13 ADMITTED FOR THE PURPOSES OF THIS PROCEEDING. HE IS NOT A
14 MEMBER OF THE CALIFORNIA BAR AND HE IS NOT PROPERLY BEFORE
15 THE COURT.

16 THE COURT: ALL RIGHT. THEN I THINK WE HAD BETTER
17 STICK WITH COUNSEL.

18 MR. WILSON: THE POINT I WAS GOING TO MAKE, THE ISSUE
19 YOU RULED ON, THE FACT ISSUE RELATED TO JURISDICTION NOT
20 TO THE MERITS OF WHETHER MR. ARMSTRONG SHOULD BE ENJOINED.

21 THE COURT: YOU ARE USING THE WORD JURISDICTION.
22 WE DID USE THAT WORD.

23 IF YOU LOOK AT THE MINUTE ORDER IT DOESN'T
24 USE THE WORD JURISDICTION. I WAS APPLYING THE FACTS YOU
25 BROUGHT BEFORE ME TO THE LAW THAT YOU CITED, AND I MADE
26 HOLDINGS THAT THAT LAW DID NOT SUPPORT THE REMEDY THAT
27 YOU SOUGHT.

28 NOW, THAT CONTROVERSY WAS WHETHER OR NOT THERE

1 WAS AN ORDER REQUIRING JUDGE -- REQUIRING MR. ARMSTRONG TO
2 COMPLY WITH THE AGREEMENT, AND I DETERMINED THERE WAS NO
3 ORDER AND THERE WAS NO LEGAL BASIS FOR ME MAKING THE ORDER
4 THAT YOU SOUGHT.

5 NOW, AS WE TALK ABOUT THIS I AM WONDERING
6 SOMETHING THAT I HADN'T THOUGHT OF BEFORE AND THAT IS THE
7 COMPLAINT THAT YOU FILED IN MARIN COUNTY.

8 LOOKING AT THIS FILE I SURE AM GLAD WE HAVE A
9 RULE REQUIRING BLUE BACKS. I DID FINALLY FIND THE
10 COMPLAINT AND MAYBE -- IT'S HARD TO TALK ABOUT SOMETHING
11 WITHOUT GETTING INTO IT, BUT MAYBE THIS COMPLAINT IS A TOTALLY
12 DIFFERENT SITUATION.

13 MR. WILSON: IT IS A NEW CASE.

14 THE COURT: WELL, MAYBE WHAT YOU ARE SAYING IS YOU
15 ARE ACCEPTING THE FACT THAT THERE WAS NO ORDER FROM
16 JUDGE BRECKENRIDGE AND -- BUT YOU ARE SAYING THERE WAS AN
17 AGREEMENT AND YOU WANT TO PURSUE A LEGAL REMEDY FOR BREACH OF
18 CONTRACT WITHOUT REGARD TO THE FACT.

19 MR. WILSON: EXACTLY. WHEN YOU MADE YOUR ORDER IN
20 DECEMBER, HOWEVER, YOUR -- WHEN YOU LOOK AT THE TRANSCRIPT
21 WE CONCLUDED THAT YOU -- THIS COURT WAS SAYING IT DIDN'T HAVE
22 JURISDICTION.

23 THE COURT: THAT WAS A TOTAL MISREADING.

24 MR. WILSON: I UNDERSTAND THAT. WE LOOKED AT THE
25 CONTRACT.

26 MR. ARMSTRONG WAS IN MARIN COUNTY. THAT'S WHERE
27 HE HAS LIVED AND WHERE THE BREACHES WERE OCCURRING. THAT'S
28 WHY WE SUED IN MARIN COUNTY.

1 THE COURT: JURISDICTION IN THAT WAY WAS NEVER THE
2 WORD NEVER THE --

3 MR. WILSON: PERHAPS IT WAS NOT THE RIGHT WORD TO USE.

4 THE COURT: MOVING IT UP TO MARIN COUNTY --

5 MR. WILSON: IT WAS A QUESTION OF VENUE.

6 MR. GREENE ARGUED THE CLAUSE PURPORTED TO
7 CONFER THAT JURISDICTION WAS REALLY A VENUE CLAUSE.

8 THE COURT: LOOK, I AM JUST SAYING YOU NEED TO DECIDE,
9 YOU NEED TO GET A DECISION WHETHER THIS IS THE SAME
10 CONTROVERSY AS I DECIDED OR A DIFFERENT ONE.

11 THERE IS AN ARGUMENT ON BOTH SIDES OF THAT.

12 MR. WILSON: WE CLEARLY BELIEVE IT'S A DIFFERENT
13 CASE.

14 THE CASE YOU MADE YOUR RULING ON WAS A CASE
15 STARTED BACK IN 1982. IT INVOLVED ARMSTRONG, MARY SUE
16 HUBBARD IN A DIFFERENT --

17 THE COURT: I ONLY GOT IT ON THE CONTROVERSY ABOUT
18 ARMSTRONG BREACHING THE AGREEMENT OF CONFIDENTIALITY. THAT
19 DEFINITELY WAS THE CONTROVERSY BEFORE ME.

20 HOWEVER, IT WAS BEFORE ME ONLY ON THE BASIS
21 OF SEEKING IN EFFECT A MANDATORY INJUNCTION, I THINK.

22 I DON'T THINK THERE WAS ANY DAMAGES SOUGHT.

23 MR. WILSON: IT WAS A REMEDY THAT WAS SOUGHT UNDER
24 THE SETTLEMENT AGREEMENT.

25 THE COURT: WAS IT SOUGHT UNDER THE SETTLEMENT
26 AGREEMENT OR WAS IT SOUGHT UNDER WHAT YOU THOUGHT WAS A
27 BRECKENRIDGE ORDER?

28 MR. WILSON: IT WAS SOUGHT UNDER THE SETTLEMENT

1 AGREEMENT.

2 THE COURT: YOU ARE ARGUING THE MARIN COUNTY CASE
3 IS THE SAME AS WHAT YOU SOUGHT BEFORE ME.

4 MR. WILSON: NO. YOUR ORDER WAS YOU COULD NOT
5 ENFORCE THE SETTLEMENT AGREEMENT.

6 WHAT WAS OUR REMEDY, FILE A NEW ACTION. WE FILED
7 A NEW ACTION.

8 THE COURT: I UNDERSTAND THAT ARGUMENT.

9 I NEVER HELD THAT, BECAUSE BRECKENRIDGE DIDN'T
10 ORDER THE PARTIES TO COMPLY WITH THE AGREEMENT THAT THEY
11 WERE FREE TO BREACH IT WITHOUT HAVING ANY REMEDY.

12 MR. WILSON: YOU HELD BECAUSE HE DIDN'T SIGN THE
13 AGREEMENT YOU WEREN'T GOING TO ENFORCE IT.

14 THE COURT: I WASN'T GOING TO JUDICIALLY ENFORCE IT,
15 BUT THAT ISN'T A HOLDING THE PARTIES ARE IMMUNE FROM A
16 BREACH OF CONTRACT ACTION.

17 MR. WILSON: WE DID NOT THINK THAT WAS WHAT YOUR
18 RULING WAS. WE FELT YOUR RULING WAS, WELL, WE HAVE TO FILE
19 A NEW ACTION.

20 WE FILED A NEW ACTION. IT IS A NEW CASE.
21 WHETHER IT WAS FILED IN MARIN OR HERE IT'S A DIFFERENT CASE.

22 THE COURT: AS I THINK ABOUT IT MAYBE THE MOST
23 EXPEDITIOUS THING TO DO IS TO JUST ACCEPT THE 170 AND LET IT
24 GO AS A NEW CASE, DIFFERENT BASES AND LET DEPARTMENT 1 DECIDE.

25 MAYBE THEY HAVE ALREADY DECIDED THE RELATED
26 CASE. THEN WE GET BACK TO THE SAME PROBLEM.

27 IF THEY HAVE RELATED IT HERE THEN YOU DO GET TO
28 THIS PROBLEM ON THE PEREMPTORY CHALLENGE. YOU GET TO THAT

1 PROBLEM WHETHER OR NOT A PARTY IS MORE OR LESS COLLATERALLY
2 ESTOPPED AFTER HAVING LITIGATED THE SAME CONTROVERSY EVEN
3 THOUGH IT'S A DIFFERENT FORMAT.

4 MR. WILSON: I DON'T THINK THAT'S WHAT THE RULE SAYS.

5 MR. MORANTZ: I KNOW THE COURT --

6 THE COURT: WHAT ARE YOU GOING TO DO NOW? I CERTAINLY
7 WON'T ACT UNTIL THIS IS DECIDED, AND YOU HAVE A PRELIMINARY
8 INJUNCTION OUT THAT'S RUNNING OUT ON MAY 4TH.

9 MR. WILSON: IF IT'S GOING TO BE BRIEF IT SHOULD BE
10 CONTINUED.

11 MR. MORANTZ: THEY ARE THE ONE WHO FILED THIS. OUR
12 POSITION IS WE WANT AN OPPORTUNITY TO BRIEF IT.

13 WE DIDN'T CREATE THIS PROBLEM. WE DO OBJECT TO
14 IT.

15 THE COURT: DO YOU ASSERT THE RIGHT TO A JURY TRIAL
16 ON YOUR MARIN COUNTY ACTION?

17 MR. WILSON: YES. WE ASSERT THE RIGHT TO A JURY TRIAL.
18 THE JUDGE DETERMINES --

19 THE COURT: ULTIMATELY.

20 MR. WILSON: WE HAVEN'T MADE THAT DECISION YET.

21 THE COURT: THAT SORT OF SAYS IT'S A DIFFERENT CASE
22 THAN THE ONE I DECIDED.

23 MR. WILSON: WE CERTAINLY HAVE A RIGHT TO A JURY TRIAL
24 FOR THE DAMAGES ISSUE.

25 WHETHER WE WOULD DECIDE TO TRY THE CASE TO A JURY
26 OR NOT --

27 THE COURT: THAT'S YOUR CHOICE. I AM USING THAT AS
28 SORT OF A --

1 MR. MORANTZ: WHAT HAPPENED IN THE FIRST CASE WAS THEY
2 ASKED FOR MONETARY DAMAGES AND ASKED PURSUANT TO CLAUSES
3 IN THE CONTRACT THAT CALL FOR \$50,000 LIQUIDATED DAMAGES
4 THEY ASKED FOR SPECIFICALLY SET FORTH IN THE CONTRACT.

5 THE COURT: IN OTHER WORDS, THEY ASKED FOR THAT IN
6 THE 53 CASE?

7 MR. MORANTZ: YOU MADE OTHER FACTUAL FINDINGS. THEY
8 HAVEN'T ALL -- YOU MADE SEVERAL OTHER FINDINGS, AND YOU MADE
9 COMMENTS ABOUT DURESS AND CERTAIN MATTERS DURING THE COURSE
10 OF THOSE 72 PAGES.

11 YOU MADE COMMENTS EVEN WHY YOU WOULD FIND JUDGE
12 BRECKENRIDGE DID NOT READ IT BECAUSE OF THE PUBLIC
13 POLICIES.

14 THE COURT: NO. I THINK WHAT I SAID IS THAT HAD HE
15 BEEN ASKED TO MAKE AN ORDER I WAS SPECULATING HE PROBABLY
16 WOULDN'T HAVE FOR THOSE PUBLIC POLICY REASONS, IN VIEW OF
17 THE NATURE OF THIS AGREEMENT.

18 IT WOULD JUST BE A MISHMASH FOR THE COURT OR ORDER
19 THE COMPLIANCE WITH THAT AGREEMENT.

20 MR. MORANTZ: YOU ALSO MADE COMMENTS ABOUT THE SUBJECT
21 OF WHETHER OR NOT IT WAS OVERBROAD.

22 YOU MADE A COMMENT ABOUT WAS -- THERE ARE A LOT
23 OF COMMENTS AND FINDINGS AND THINGS YOU HAD IN THOSE 73
24 PAGES.

25 THIS IS ONE OF THE REASONS WE WANT TO BRIEF IT
26 TO ARGUE, BASICALLY SPEAKING THAT PEREMPTORY OF 170.6 SHOULD
27 NOT BE ALLOWED TO BE USED FOR THE FOLLOWING SCENARIO.

28 YOU FILE AN ACTION. YOU SORT OF DON'T LIKE THE

20
1 WAY THE JUDGE IS GOING ON THIS PARTICULAR MATTER SO YOU JUST
2 FILE A DISMISSAL.

3 GO REFILE IT IN FRONT OF ANOTHER JUDGE. SAY THE
4 STATUTE OF LIMITATIONS HAS NOT RUN.

5 DEPARTMENT 1 SAYS NO WAY. WE ARE THROWING YOU
6 BACK THERE. AND YOU FILE A 170.6, AND YOU BASICALLY HAVE
7 FOUND A CATCHALL USING 170.6 TO DISMISS AN ACTION, TO START
8 AGAIN IF YOU DON'T LIKE SOME OF THE RULES THAT HAVE BEEN
9 MADE.

10 EXCUSE ME, COUNSEL. I AM NOT THROUGH.

11 WHAT I AM SAYING, YOUR HONOR IS THAT THIS CASE
12 HAS SOME ISSUES. IT'S CLOSE.

13 WE ARE NOT EVEN SAYING WE ARE RIGHT. WE ARE
14 SAYING WE WANT AN OPPORTUNITY TO BRIEF IT.

15 IT'S AN IMPORTANT RULING. IT MAY BE THE SUBJECT
16 OF AN APPELLATE HEARING. WE --

17 THE COURT: ALL RIGHT. WHAT DO WE DO ABOUT IT?

18 MR. WILSON: THAT'S NOT WHAT HAPPENED, WE DID NOT
19 DISMISS THE CASE. THE CASE HAD PREVIOUSLY BEEN DISMISSED.

20 I THINK THAT'S ONE OF THE REASONS WHY YOU MADE
21 THE ORDER THAT YOU MADE.

22 THAT CASE HAD ALREADY BEEN DISMISSED.

23 YOU MADE AN ORDER. WE HAD TO FILE A NEW CASE.
24 NO QUESTION ABOUT IT.

25 THE COURT: I THINK WHAT OCCURRED TO ME DURING THIS
26 ARGUMENT IS THAT THIS CASE DOESN'T EVEN MENTION WHETHER
27 JUDGE BRECKENRIDGE DID OR DIDN'T MAKE AN ORDER AND DOESN'T
28 EVEN MENTION ENFORCING THE AGREEMENT AS A JUDICIALLY

1 SUPERVISED AGREEMENT UNDER 664.6. SO THIS CASE IS WHAT YOU
2 MIGHT CALL A RUN-OF-THE-MILL BREACH OF CONTRACT CASE AND,
3 THEREFORE, I DON'T THINK THERE IS MUCH TO THIS ARGUMENT
4 THAT IT IS THE SAME CASE OR CONTROVERSY THAT I DECIDED AND
5 MAYBE ON THAT BASIS ALONE -- NOW, IT MAY BE RELATED, AND
6 MAYBE DEPARTMENT 1 HAS SENT IT HERE BECAUSE THEY HAVE
7 DETERMINED THAT IT'S RELATED. AND I GUESS WE SHOULD SORT
8 OF SUSPECT THAT, BECAUSE IT SHOWS 56 OUT OF ALL THE
9 DEPARTMENTS IN THE BUILDING.

10 THERE IS ONE OTHER POSSIBLE REASON. I AM THE
11 ONLY I.C. JUDGE THAT IS NOW HEARING WRITS AND RECEIVERS
12 MATTERS.

13 MR. MORANTZ: JUDGE O'BRIEN MADE THE COMMENT ON THE
14 BENCH. HE SAID, I UNDERSTAND ONE OF THE PARTIES HAS MADE A
15 MOTION TO SEND THIS CASE TO JUDGE GEERNAERT.

16 I THINK HE WAS AWARE --

17 THE COURT: IN ALL LIKELIHOOD THAT'S WHY IT'S HERE
18 BECAUSE IT'S DEEMED TO BE RELATED.

19 THEN YOU GET TO THE POINT I DON'T THINK THERE
20 IS ANY CASE COVERING THE SCENARIO.

21 I HAVE NOT MADE ANY RULING OR DECISION BASED
22 ON A BREACH OF CONTRACT CASE.

23 ALL I DECIDED WAS THE LAW APPLYING TO THE
24 CONTROVERSY AS TO WHETHER OR NOT IT COULD BE ENFORCED UNDER
25 664.6 OR THAT OTHER CODE SECTION, AND BOTH OF THOSE WERE
26 PREMISED ON THEIR BEING A PRIOR COURT ORDER.

27 MR. MORANTZ: YOU DID MAKE STATEMENTS IN THE TRANSCRIPT
28 WHETHER OR NOT THE CONTRACT WOULD BE ENFORCIBLE.

1 THE COURT: I MAY HAVE MADE COMMENTS ABOUT IT BUT
2 THERE IS A LOT OF LAW HOW UNCERTAIN A CONTRACT HAS TO BE
3 BEFORE YOU CAN SUE FOR BREACH OF CONTRACT. AND THERE IS EVEN
4 A DISTINCTION BETWEEN HOW SPECIFIC IT NEEDS TO BE FOR
5 SPECIFIC.

6 MR. MORANTZ: WE WOULD LIKE THE OPPORTUNITY TO BE
7 ABLE TO BRIEF.

8 YOU MADE STATEMENTS AND FINDINGS THAT DO EFFECT
9 THE CONTRACT ISSUE.

10 THE COURT: I DON'T SEE THERE IS A VALID REASON TO
11 BRIEF THIS. IT'S A DIFFERENT CASE. IT'S NOT THE CASE
12 I HAD.

13 THERE IS NO REASON FOR ME NOT TO RECOGNIZE
14 THIS PEREMPTORY CHALLENGE.

15 MR. MORANTZ: WE ARE TRYING TO GET AN OPPORTUNITY
16 TO RESEARCH IT AND TO BE ABLE TO BRIEF IT.

17 YOU MAY HAVE MADE RULINGS RELATING TO A 66.4.
18 YOU MADE FACTUAL FINDINGS THAT WOULD ALSO AFFECT A BREACH
19 OF CONTRACT SUIT.

20 THE COURT: I CERTAINLY DIDN'T INTEND ANY OF MY
21 ANALYSIS TO BE A FACTUAL FINDING.

22 ACTUALLY IT WOULD BE A JURY TRIAL ENTITLEMENT,
23 SO I AM GOING TO --

24 MR. MORANTZ: WE ALSO HAVE THE ISSUE OF TIMELINESS.
25 IT WASN'T FILED IN DEPARTMENT 1 OR 85.

26 THE COURT: THIS IS SUCH AN UNUSUAL METHOD FOR AN
27 ASSIGNMENT TO COME FROM DEPARTMENT 1 THAT HAD YOU BEEN
28 SITTING THERE IN 1 AND HE SAID GO TO 56 I THINK YOU PROBABLY

1 HAD TO FILE IT THERE IN 1.

2 BUT IN VIEW OF THE WAY THIS HAPPENS I THINK
3 THAT'S READING IT PRETTY TECHNICALLY. SO I AM GOING TO
4 RECOGNIZE THE CHALLENGE AND OVERRULE THE OBJECTIONS.

5 SO HERE IS THE MINUTE ORDER. AFTER CONSIDERING
6 ARGUMENTS OF COUNSEL IN SUPPORT AND IN OPPOSITION TO THE
7 PEREMPTORY CHALLENGE FILED THIS DATE THE COURT RECOGNIZES
8 THE CHALLENGE AS TIMELY AND VALID, AND THE MATTER IS
9 TRANSFERRED TO DEPARTMENT -- I AM GOING TO CALL DEPARTMENT 1
10 AND ASK HIM WHETHER HE WANTS ME TO SEND IT BACK TO 85.

11 JUDGE MALLANO HAS ORDERED IT TO DEPARTMENT 86.

12 (PROCEEDINGS CONCLUDED.)
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 56

HON. BRUCE R. GEERNAERT, JUDGE

CHURCH OF SCIENTOLOGY, ETC.,

PLAINTIFFS,

VS.

GERALD ARMSTRONG, ET AL.,

DEFENDANTS.

NO. BC 052395

REPORTER'S CERTIFICATE

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

SS.

I, MAUREEN GERWIG, CSR NO. 1877, OFFICIAL REPORTER OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE FOREGOING PAGES, 1 THROUGH 23, COMPRISE A FULL, TRUE, AND CORRECT TRANSCRIPT OF THE PROCEEDINGS HELD IN THE ABOVE-ENTITLED MATTER ON TUESDAY, APRIL 28, 1992.

DATED THIS 9TH DAY OF MAY, 1992.

Maureen Gerwig CSR #1877
OFFICIAL REPORTER

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